

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 10369 of 2003**

with

CIVIL APPLICATION NO. 7803 OF 2005**For Approval and Signature:****HONOURABLE MR.JUSTICE H.K.RATHOD**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GSRTC - Petitioner(s)**Versus****JAMNADAS K LAKHANI - Respondent(s)****Appearance :**

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR CHETAN P PANDYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**Date : 23/02/2006****ORAL JUDGMENT**

1. Heard the learned Advocate, Mr.A.M.Dagli, appearing on behalf of petitioner - Corporation and learned Advocate, Mr.G.K.Patel with learned Advocate,

Mr.Chetan P. Pandya, on behalf of respondent - workman.

2. In the present petition, petitioner - Corporation has challenged the order passed by Conciliation Officer and Deputy Labour Commissioner under Section 33 (2)(b) of the I.D.Act,1947 in an Approval Application No.374 of 2002 dated 3rd February,2003. This Court has issued notice made it returnable on 25th August,2003 by order dated 21st July,2003 to the respondent. Thereafter, though served, the respondent was not remained present. Therefore, this Court has issued rule and ad-interim relief in terms of Para.10(C) was granted by order dated 1st September,2003. The Conciliation Officer has rejected Approval Application filed by Corporation. The Approval Application was filed on 3rd September,2002 by Corporation and according to respondent - workman, order of dismissal was passed on 4th September,2002 during the pendency of conciliation proceedings when conciliation was fixed for further hearing on 5th September,2002. In view of

these facts, the Conciliation Officer has come to the conclusion that under Section 33(2)(b) of the I.D.Act,1947, simultaneous action of dismissal, Approval Application and one month notice pay are not complied by the Corporation. Therefore, Conciliation Officer has rejected Approval Application. The Approval Application was filed to get the approval of Conciliation Officer for dismissal order passed by Corporation dated 4th September,2002 against the respondent workman. The legal effect of rejection of Approval Application is that workman is deemed to be in service as if dismissal order is not approved by Conciliation Officer. (See : in case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Shri Ram Gopal Sharma and others, Larger Bench of Apex Court reported in AIR 2002 SC 643). The date of superannuation of workman is 31st May,2006. So, the question arises about back wages from date of dismissal 4th September,2002 to 31st May,2006.

3. When the matter was listed on earlier occasion, this matter was discussed between Advocates and some

suggestion has been made by this Court to the Advocates appearing for the parties. Therefore, ultimately, learned Advocate, Mr.Dagli, wrote a letter dated 25th January,2006 to the Corporation and in response to the same, Corporation has agreed for settlement of entire matter on following terms, as mentioned in letter dated 31st January,2006, written by Assistant Legal Advisor of Corporation. "If the workman agrees to forgo the full back wages of interim period from date of dismissal to date of retirement and also agrees to receive 50% last drawn wages under Section 17B of the I.D.Act from date of Application dated 19th April,2003, then, Corporation is ready to settle the matter." In the said letter, after making such representation to the Court, Corporation has instructed to his Advocate to obtain the order from the Court accordingly. Xerox copy of letter dated 25th January,2006 and letter dated 31st January,2006 of the Corporation are taken on record.

4. Now, the question is that, in case of rejection of Approval Application, whether workman is entitled

the benefit of 17B of I.D.Act or not ? This question has been examined by the Full Bench of Delhi High Court in case of Delhi Transport Corporation Vs. Jagdish Chander, 2005-III LLJ 390. Para.35 of the said decision is quoted as under :

“35. Thus, our answer to the following formulated question as to whether the provisions of Section 17-B of the Industrial Disputes Act, 1947 will be applicable in a case where the management in the writ petition has challenged the order of the Labour Court / Industrial Tribunal whereby its application under Section 33(2)(b) of the Act seeking approval of the order of dismissal was dismissed by such Court or Tribunal is as under:

“The provisions of Section 17-B of the Industrial Disputes Act will be applicable in a case where the management in the writ petition has challenged the order of the

Labour Court / Industrial Tribunal whereby its application under Section 33(2)(b) of the Act seeking approval of the order of dismissal was dismissed by such Court or Tribunal, subject to the conditions stated in Section 17-B itself."

5. However, considering the allegations made against the workman, the financial condition of the Corporation and the nearest date of retirement of the workman, according to my opinion, the settlement which has been suggested by the Corporation is just and proper, which has been accepted by the learned Advocate, Mr.G.K.Patel with learned Advocate, Mr.Chetan P. Pandya, on behalf of respondent workman. Learned Advocate, Mr.G.K.Patel, has agreed that as per letter dated 31st January,2005, which has been shown to him, this Court may pass the order according to this letter. Therefore, following order is passed.

6. The rejection of Approval Application by order dated 3rd February,2003, the workman is deemed to be

in service for all purposes till the date of retirement. But, however, according to terms of settlement, workman is not entitled any amount of back wages from date of dismissal 4th September,2002 till 31st May,2006. However, petitioner Corporation shall have to pay 50% full wages last drawn by workman inclusive of any maintenance allowance admissible to him under any Rule w.e.f. 19th April,2003 to 31st May,2006. The net result of the said settlement is that workman is now not required to be reinstated in service by the Corporation and workman is not entitled any amount of back wages from date of dismissal dated 4th September,2002 till the date of retirement dated 31st May,2006.

7. In view of the above settlement, it is directed to the Corporation to pay 50% full wages last drawn by workman inclusive of any maintenance allowance admissible to him under any Rule w.e.f. 19th April,2003 to 31st May,2006 within a period of four weeks from today. It is further directed that Corporation shall have to calculate all the

retirement benefits as if workman is in service upto 31st May, 2006 and to pay all the retirement benefits to the workman, which are available under Service Regulations within a period of two months from the date of receipt of copy of this order.

8. In view of the above settlement arrived at between the parties and direction issued by this Court, this matter is disposed of accordingly. Rule is discharged. Interim relief, if any, stands vacated.

9. This Court has appreciated the sincere efforts made by learned Advocate, Mr.A.M.Dagli, who is appearing on behalf of petitioner - Corporation and also Corporation has rightly agreed to the suggestion of the Court.

10. In view of the order passed in Special Civil Application No.10369 of 2003, Civil Application No.7803 of 2005 does not survive and same stands disposed of accordingly.

(H . K . RATHOD , J .)

(vipul)